




OOD
PM 19-08

Effective: December 21, 2018

To: All of EOIR
From: James R. McHenry III, Director 
Date: December 21, 2018

**ACCEPTANCE OF NOTICES TO APPEAR AND
USE OF THE INTERACTIVE SCHEDULING SYSTEM**

PURPOSE:	Establish standards for receipt of Notices to Appear as filed by the Department of Homeland Security.
OWNER:	Office of the Director
AUTHORITY:	<i>Pereira v. Sessions</i> , 138 S. Ct. 2105 (2018); 8 C.F.R. § 1003.0(b)(1); 8 C.F.R. § 1003.14(a)
CANCELLATION:	None

The initiation of removal proceedings generally involves two steps. First, a component of the Department of Homeland Security (DHS) (*i.e.*, U.S. Customs and Border Protection (CBP), U.S. Citizenship and Immigration Services (USCIS), or U.S. Immigration and Customs Enforcement (ICE)) serves an individual with a Notice to Appear (NTA) alleging that person's removability from the United States. Second, DHS files that NTA with an immigration court. Jurisdiction with the court does not vest until the NTA is filed. 8 C.F.R. § 1003.14(a). Consequently, although DHS may serve the NTA to an individual with a time and date for a hearing on it, the immigration court does not actually acquire jurisdiction—and, thus, the case is not actually “scheduled” and no record of proceedings exists—until DHS files the NTA with the court. Accordingly, although an individual may believe that his or her case has been scheduled for a hearing at the time and date indicated on the NTA and may appear for that hearing, that hearing cannot occur if the NTA has not also been filed with the immigration court.

Following the Supreme Court's decision in *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), EOIR began providing dates and times directly to DHS to use on NTAs for some non-detained¹ cases

¹ Prior to *Pereira*, EOIR had never used ISS for detained cases. Following *Pereira*, EOIR attempted to use ISS for detained cases but found the operational logistics impossible to overcome due to continual fluctuations in the detained population. Consequently, EOIR provides hearing dates directly to DHS for use on NTAs for detained cases and will continue to do so.

while it worked to provide access to DHS to its Interactive Scheduling System (ISS).² Dates have been provided to DHS through January 31, 2019.

All three DHS components authorized to issue NTAs now have access to ISS; thus, there is no further need for EOIR to provide initial hearing dates in non-detained cases directly to DHS for use on NTAs. Accordingly, EOIR will not provide initial hearing dates after January 31, 2019, to DHS for non-detained cases, except through ISS. DHS may utilize ISS in order to schedule hearings for specific dates and to reflect those scheduled hearings on NTAs.³

Additionally, EOIR will reject any NTA in which the time or date of the scheduled hearing is facially incorrect—*e.g.* a hearing scheduled on a weekend or holiday or at a time when the court is not open.

For any case in which the NTA is not filed with the immigration court as of the time and date of the hearing, EOIR will classify that case as a “failure to prosecute.” It will also reject the NTA if there is an attempt to file it after the time and date of the hearing listed on the NTA. In such cases, DHS must re-serve the subject of the NTA and file the NTA with the immigration court in order to initiate proceedings.

For any case in which the NTA is filed with the immigration court fewer than 10 calendar days prior to the scheduled hearing—but not later than the time and date of the hearing—the immigration judge retains discretion to proceed with the hearing as scheduled or to reschedule the case. The case may be rescheduled if there is not sufficient time to process the NTA or sufficient docket space for it on the scheduled date. If the immigration judge chooses to reschedule the case, the court will endeavor to notify the respondent as quickly as possible of that decision.⁴

All individuals who have been served an NTA with a hearing date and time on it are encouraged to contact EOIR’s Automated Case Hotline using the numbers below to confirm the time and date of any hearing listed on an NTA. If no information is found concerning a correctly-entered alien registration number and the scheduled hearing is less than 10 calendar days away, the individual is encouraged to contact the DHS office that issued the NTA or the relevant immigration court.

Case Information: 800-898-7180 (toll-free)

240-314-1500 (not a toll-free call)

800-828-1120 (TDD)

² ISS allows DHS to control scheduling on EOIR’s dockets and to determine which cases are scheduled for particular dates and times.

³ The Board of Immigration Appeals has determined that an NTA that does not specify the hearing date and time nevertheless vests an immigration court with jurisdiction in certain circumstances. *Matter of Bermudez-Cota*, 27 I&N Dec. 441 (BIA 2018). That issue is in litigation, and further guidance on it, as warranted, may be forthcoming regarding both grants of relief and orders of removal issued in such cases.

⁴ Depending on the timing of the filing of the NTA, however, written notification of rescheduling prior to the time and date of the hearing may not be possible in all instances.

This PM is not intended to, does not, and may not be relied upon to create, any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Please contact your supervisor if you have any questions.